UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JUAN ALONZO-MIRANDA	§	
Plaintiff,	§	
	§	
vs.	§	**CIVIL ACTION NO.**
SCHLUMBERGER TECHNOLOGY	§	**5:13-cv-01057-RCL**
CORPORATION,	§	
Defendant.	§	

PLAINTIFF'S OPPOSED MOTION FOR AN AWARD
OF REASONABLE FEES AND COSTS

Plaintiff Juan Alonzo-Miranda moves the Court for an award of reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 12117(a) (incorporating 42 U.S.C. § 2000e-5(k)[1]), FED. R. CIV. P. 54(d)(d), and LOCAL RULE CV-7(j).

Alonzo-Miranda satisfies both the statute and Rule 54's requirement that he be "the prevailing party" in this litigation. A plaintiff prevails

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[1] In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the [EEOC] or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, and the [EEOC] and the United States shall be liable for costs the same as a private person.

42 U.S.C. § 2000e-5(k). Some of the cases cited in this motion may involve other statutes that allow a prevailing plaintiff to recover a reasonable fee from the defendant. *Hensley v. Eckerhart*, 461 U.S. 424, 433 n.7 (1983) ("[t]he standards set forth in this opinion [based on 42 U.S.C. § 1988] are generally applicable in all cases in which Congress has authorized an award of fees to a 'prevailing party'"), *cited with approval in Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 603 n.4 (2001); *Burlington v. Dague*, 505 U.S. 557, 562 (1992) ("our case law construing what is a 'reasonable' fee applies uniformly to all" federal fee-shifting statutes).

> when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff.
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> ....
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> ... A judgment for damages in any amount, whether compensatory or nominal, modifies the defendant's behavior for the plaintiff's benefit by forcing the defendant to pay an amount of money he otherwise would not pay.

Farrar v. Hobby, 506 U.S. 103, 111-13, 113 S. Ct. 566, 573, 121 L. Ed. 2d 494 (1992). In this case, the jury found that the defendant failed to reasonably accommodate Alonzo-Miranda. (Dkt. 158 (Jury Verdict).) Pursuant to this finding, the jury awarded lost overtime wages of $5,386.50 and general compensatory damages of $23,205. (*Id.*) Including interest, Alonzo-Miranda prevailed with a total damage award of $30,534.77. (Dkt. 161.)

While § 12117(a) gives (via § 2000e-5(k)) the Court discretion to award fees to Alonzo-Miranda, he is entitled to the award unless special circumstances would render it unjust. *Christianburg Garment Co. v. Equal Employment Opportunity Comm'n*, 434 U.S. 412, 417 (1978). Thus, the Court's discretion to deny fees to any prevailing plaintiff is narrow. *Sanchez v. City of Austin*, 774 F.3d 873, 880 (5th Cir. 2014) "([t]he special-circumstances exception is a narrow carve-out of the general rule that prevailing civil-rights plaintiffs should be awarded fees"). There is no reason to deny fees in this case, particularly since the defendant never offered more than $2,500 in formal mediation, when the case had been pending for nearly a year. Alonzo-Miranda well deserves an award of reasonable fees and costs (in addition to the costs that he can recover under Rule 54(d)(1) and 28 U.S.C. § 1920).

A. The Lodestar Calculation of Alonzo-Miranda's Fees

The Supreme Court has established a "'strong presumption'" that the lodestar figure—the product of multiplying hours reasonably expended by a reasonable hourly rate— represents "the reasonable fee" to which Alonzo-Miranda is entitled. *Perdue v. Kenney A.*, 559 U.S. 542, 553-54, 130 S. Ct. 1662, 1673 (2010). As the Court noted, the lodestar method produces an award that roughly approximates the fees that the prevailing attorney would have received if he or she had been representing a paying client who was billed by the hour. 559 U.S. at 551, 130 S. Ct. at 1672. The lodestar fee's components—hours and rates—are fact findings that an appellate court would review only for clear error. *Simi Investment Co., Inc. v. Harris County*, 236 F.3d 240, 255 (5th Cir. 2000), *cert. denied*, 534 U.S. 1022, 122 S. Ct. 550, 151 L. Ed. 2d 426 (2001).

In *Perdue*, the Supreme Court contrasted the lodestar method with, on the other hand, the "method set out in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-719 (C.A.5 1974), which listed 12 factors that a court should consider in determining a reasonable fee." 559 U.S. at 550-51, 130 S. Ct. at 1671-72. (The *Johnson* factors are listed *infra* page 14.) The *Perdue* Court's reasoning clearly indicates a strong overall preference for the lodestar method over the Fifth Circuit's *Johnson* factors. But Fifth Circuit panels have, post-*Perdue*, treated the *Johnson* factors not as a disfavored alternative, but as a *complement* to the lodestar method. *See*, *e.g.*, *Ransom v. M. Patel Enters., Inc.*, 734 F.3d 377, 388 n.17 (5th Cir. 2013) ("[t]here is a strong presumption that the lodestar amount is a reasonable fee, although a court may decrease or enhance it based on the factors established in *Johnson*"); *Black v. SettlePou, P.C.*, 732 F.3d 492, 502 (5th Cir. 2013) ("after calculating the lodestar, a district court may enhance or decrease the amount of attorney's fees based on 'the relative weights of the twelve factors set forth in *Johnson*'").[2] Therefore, this motion will address both the lodestar method and the *Johnson* factors, in that order.

1. The Hours Reasonably Expended

The billing records of the attorneys seeking compensation in a fee motion are the starting point of the Court's determination of the hours reasonably expended on behalf of Alonzo-Miranda. *Hensley v. Eckerhart*, 461 U.S. 423, 433, 103 S. Ct. 1933, 1939, 76 L. Ed. 2d 40 (1983) ("[t]he party seeking an award of fees should submit evidence supporting the hours worked"); *Watkins v. Fordice*, 7

[2] Alonzo-Miranda does not seek an enhancement.

F.3d 453, 457 (5th Cir. 1993). Alonzo-Miranda's lawyers carry this initial burden with declarations concerning the accuracy of their contemporaneous billing records attached as Exhibit 3 to this motion.[3] (J. Griffin Dec. (Exh. 1) at 15; O. Villarreal Dec. (Exh. 2) at 6.[4])

For submitting this motion, the firms' contemporaneous time records were checked closely against other "'contemporaneous records, briefs or memoranda to ensure against recording errors,'" and otherwise edited for clarity and completeness so as "to allow 'this Court to make an informed decision about the relevance and appropriateness of the entry.'" *Cobell v. Norton*, 407 F. Supp. 2d 140, 155 (D.D.C. 2005). (Exh. 1 (Griffin Dec.) at ¶ 10.) Docket numbers were inserted into time entries to facilitate the identification of tasks with objective products. Also, the two firms' time records were combined into a single chronological document (Exh. 3), to facilitate review of how Alonzo-Miranda's lawyers coordinated their efforts to avoid duplication. The time entries are also coded by stage of the litigation, again to facilitate review.

All time claimed in a billing record must be reasonable in order for it to be compensable. *League of United Latin American Citizens No. 4552 v. Roscoe Indep. Sch. Dist.*, 119 F.3d 1228, 1232 (5th Cir. 1997).[5] The supporting declarations testify that the time claimed for compensation was reasonably necessary for representing Alonzo-Miranda in this litigation, (J. Griffin Dec. (Exh. 1) at 15; O. Villarreal Dec. (Exh. 2) at 7), especially in light of the novelty and complexity of this case. According to Griffin:

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[3] "'[C]ourts customarily require the applicant to produce contemporaneous billing records or other sufficient documentation so that the district court can fulfill its duty to examine the application for noncompensable hours ....'" *Gagnon v. United Technisource, Inc.*, 607 F.3d 1036, 1044 (5th Cir. 2010).

[4] John W. Griffin for Marek, Griffin & Knaupp ("MGK")
Oscar H. Villarreal for Luttrell+Villarreal Law Group ("LV")

> 3. I have represented many individuals with disabilities, but this case was novel and complex because of the nature of the disability—a military veteran's post-traumatic stress disorder—and the nature of the accommodation—a service dog. There were no previous cases under the Americans with Disabilities Act (or the Rehabilitation Act) concerning a service-dog accommodation in the workplace for an employee with PTSD, and this was first trial in the United States on the subject, so there was no existing template or precedent to fall back on for determining what was discoverable and ultimately relevant to the jury question of the reasonableness of allowing the plaintiff's service dog to accompany him at the kind of workplace where he was employed. Accordingly, it is understandable that there were many discovery disputes as both parties worked through the issues raised by this novel and complex case.

(Exh. 1 (Griffin Dec.) at ¶ 3.)

a. Billing Judgment

Alonzo-Miranda's lawyers also have the burden of showing that they have exercised billing judgment to exclude any hours that, even though contemporaneously recorded, they would not charge to Alonzo-Miranda if he were paying their bill:

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[5] Hours reasonably expended on this litigation include time spent preparing this motion for fees and costs. *Cruz v. Hauck*, 762 F.2d 1230, 1233 (5th Cir. 1985).

> Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission. "In the private sector, 'billing judgment' is an important component in fee setting. It is no less important here. Hours that are not properly billed to one's *client* also are not properly billed to one's *adversary* pursuant to statutory authority."

Hensley, 461 U.S. at 434, 103 S. Ct. at 1939-40 (citation omitted).

The lawyers' billing-judgment reductions are, for the most part, evident on the face of Exhibit 3 (reductions are printed in red ink and are text-searchable by searching the consolidated invoices for "0.00" or "reduced") or are described in the attorneys' declarations (Exhs. 1 and 2). Generally, but not exclusively, the reductions fall into these categories:

1. Villarreal has reduced his time significantly. These reductions are generally described in his declaration (Exh. 2 at ¶ 7), and are specified in his billing entries ("OHV" entries) in Exhibit 3.

2. Griffin rarely charged for inter-office conferences with Neuerburg. (Exh. 1 at ¶ 14.) Because he did not charge, this exercise of billing judgment is not noted in Griffin's billing entries ("JG" entries) in Exhibit 3, but is apparent from comparing JG entries with Neuerburg's "MN" entries in Exhibit 3.

3. Both Griffin and Neuerburg charged for non-working travel time at half of their regular rates. These reductions are noted in their billing entries in Exhibit 3.

4. It is the usual practice of Griffin's firm to bill its fee-paying clients by the quarter-hour, and his firm's timekeepers have adhered to that practice in this case. (Exh. 1 at ¶ 14.) Mr. Griffin has testified, however, that his practice—and his instruction to his firm's timekeepers —is always to round down to the nearest quarter-hour. (*Id.*) For example, a task that took 20 minutes would be billed not at 0.50, or even at 0.40 (under tenth-hour billing), but at 0.25 (and likewise if the task took, for example, 6 hours and 20minutes: it would be billed at 6.25).

b. The Termination Claim

When some claims in a lawsuit succeed and others fail, the relationship between the claims means that it may be impossible to segregate the time spent on any given task into one compensable time increment that served the successful claim and another non-compensable time increment that served the unsuccessful claim:

> In other cases the plaintiff's claims for relief will involve a common core of facts or will be based on related legal theories. Much of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis. Such a lawsuit cannot be viewed as a series of discrete claims. Instead the district court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours

reasonably expended on the litigation.

> Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee....
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> ....
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> ... Where the plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee. Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced simply because the district court did not adopt each contention raised. But where the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained.

Hensley, 461 U.S. at 435 & 440, 103 S. Ct. at 1940 & 1943.

Here, the claim for unlawful termination was not "distinct in all respects" from the claim for denial of reasonable accommodation. The common feature of both claims was the defendant's animus: it did not simply deny a reasonable accommodation, but amplified the denial with harassing treatment, such as requiring Alonzo-Miranda and his service dog to enter the workplace through a different door than other employees used. The Court itself recognized in its Pretrial Order the dual relevance of harassment claims to both the accommodation and termination issues. (Dkt. 140 at 7, ¶¶ 26 & 29.) Not only was there evidence of common relevance to both the accommodation and termination issues, but the same Schlumberger witnesses participated in both the accommodation and termination issues. Therefore, the unsuccessful claim for unlawful termination was not "distinct in all respects" from the successful accommodation claim, and time expended on the unlawful termination claim has not been excluded from the lodestar. (But such time is also addressed below in connection with adjustment under the *Johnson* factors.)

c. The Hours Component: Conclusion

Time that Alonzo-Miranda's attorneys have not excluded pursuant to the exercise of billing judgment is adequately described on their attached invoices as required by *League of United Latin American Citizens No. 4552*, 119 F.3d at 1233. These hours are reasonable and this Court commits no clear error in accepting all of them as such. *Johnston v. Harris County Flood Control Dist.*, 869 F.2d 1565, 1582 (5th Cir. 1989) ("[w]e decline to conclude that accepting as reasonable all of the time any attorney has submitted automatically renders the court's finding clearly erroneous"), *cert. denied*, 493 U.S. 1019, 110 S. Ct. 718, 107 L. Ed. 2d 738 (1990).

2. The Reasonable Hourly Rate

Once the compensable time is determined, the court's second step is to determine a reasonable hourly rate "according to the prevailing market rates in the relevant community," *Blum v. Stenson*, 465 U.S. 886, 895, 104 S. Ct. 1541, 1547 (1984), i.e., in San Antonio, where the case was tried.

Since Villarreal offices in San Antonio, his actual billing rate when working for fee-paying clients is probative evidence of a reasonable hourly rate for him. *La. Power & Light Co. v. Kellstrom*, 50 F.3d 319, 328 (5th Cir.), *cert. denied sub nom. L.K. Comstock & Co., Inc. v. La. Power & Light Co.*, 516 U.S. 862, 116 S. Ct. 173, 133 L. Ed. 2d 113 (1995). He has requested compensation at $350/hour, and has testified that such is within the range of his actual billing rates when working for clients such as Alonzo-Miranda. (Exh. 2 at ¶ 3)

Other probative evidence of prevailing market rates may come in the form of affidavits from attorneys who, through their practice in the market, have first-hand knowledge of the rates prevailing in that market for attorneys comparable to those of the attorneys involved in the fee motion:

> In seeking some basis for a standard, courts properly have required prevailing attorneys to justify the reasonableness of the requested rate or rates. To inform and assist the court in the exercise of its discretion, the burden is on the fee applicant to produce satisfactory evidence—in addition to the attorney's own affidavits—that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation. A rate determined in this way is normally deemed to be reasonable, and is referred to—for convenience—as the prevailing market rate.

Blum v. Stenson, 465 U.S. at 895 n.11, 104 S. Ct. at 1547 n. 11. *See also Tollet v. City of Kemah*, 285 F.3d 357, 368-69 (5th Cir. 2002), *cert. denied*, 537 U.S. 883, 123 S. Ct. 105, 154 L. Ed. 2d 141 (2002).

Consistently, this motion is supported by declarations from four attorneys who practice in this market (Exhs. 4-7: Declarations of Alex Katzman, Glen Mangum, David Kern, and Malinda Gaul), who validate the rates requested by all of Alonzo-Miranda's counsel. His counsel, other than Villarreal, do not customarily bill clients for work in the San Antonio legal market—they office two hours away in the much smaller town of Victoria. But that is no obstacle to setting their rates, because the question is whether a requested rate is reasonable in the *forum*'s market. Indeed, even if "the requested rate of compensation exceeds the attorney's usual charge but remains within the customary range in the community, the district court should consider whether the requested rate is reasonable." *Islamic Ctr. v. City of Starkville*, 876 F.2d 465, 469 (5th Cir. 1989), *abrogation on other grounds recognized Shipes v. Trinity Indus.*, 987 F.2d 311, 322-23 (5th Cir.), *cert. denied*, 510 U.S. 991, 114 S. Ct. 548, 126 L. Ed. 2d 450 (1993).

Alonzo-Miranda's lawyers and paralegals, their requested rates, and the evidence supporting their rates are charted below:

Lawyer	**Year Licensed**	**Requested Rate**[6]	**Evidence from Other than the Applicant Lawyers**
John W. Griffin	1981	$500/hour	Declarations of Alex Katzman, Glen Mangum, David Kern, and Malinda Gaul
Robert E. McKnight	1993	$400/hour	Declarations of Alex Katzman, Glen Mangum, and Malinda Gaul
Oscar H. Villarreal	1980	$350/hour	Declaration of Alex Katzman
Michael J. Neuerburg	2010	$275/hour	Declarations of Alex Katzman, Glen Mangum, and Malinda Gaul
Paralegals			
Richard Soliz		$125/hour	Declarations of Glen Mangum and Malinda Gaul

3. The Pre-Adjustment Lodestar Fee

The lodestar fee, based on the reasonable hours documented in Exhibit 3, and on the hourly rates documented in the supporting declaration, in this case is:

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[6] Current rates are used for all timekeepers even though the first time recorded in this case was in September 2013. That is consistent with *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989):

> [C]ompensation received several years after the services were rendered ... is not equivalent to the same dollar amount received reasonably promptly as the legal services are performed .... We agree, therefor, that an appropriate adjustment for delay in payment—whether by the application of current rates rather than historic hourly rates or otherwise—is within the contemplation of the statute [§ 1988].

Lawyer	**Hours**	**Rate**	**Lodestar Fee**
John W. Griffin	261.50	$500/hour	$130,750.00
Robert E. McKnight	58.00	$400/hour	$23,200.00
Oscar H. Villarreal	9.40	$350/hour	$3,290.00
Michael J. Neuerburg	643.00	$275/hour	$176,825.00
Paralegals			
Richard Soliz	8.00	$125/hour	$1,000.00
Total			$335,065.00

B. The *Johnson* Factors[7]

The *Johnson* factors—originally 12, but now 11—are:

> (1) [T]he time and labor required; (2) the novelty and difficulty of the questions; (3) the skill required to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) ... ;[8] (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Johnson, 488 F.2d at 717-19. But the Supreme Court in *Perdue* has cautioned that *any* factor (*Johnson* or otherwise), to the extent it was used in setting one of the lodestar components, may not be used again to adjust the lodestar.

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[7] *See supra* pages 3-5

[8] The sixth factor was "whether the fee is fixed or contingent," but it was eventually overruled. *Rutherford v. Harris County*, 197 F.3d 173, 193 (5th Cir. 1999) ("the Supreme Court has barred any use of this factor").

> We have thus held that the novelty and complexity of a case [corresponding to *Johnson* factor (2)] generally may not be used as a ground for an enhancement because these factors "presumably [are] fully reflected in the number of billable hours recorded by counsel." We have also held that the quality of an attorney's performance [corresponding to *Johnson* factor (3)] generally should not be used to adjust the lodestar "[b]ecause considerations concerning the quality of a prevailing party's counsel's representation normally are reflected in the reasonable hourly rate."

Perdue, 559 U.S. at 553, 130 S. Ct. at 1673. *See also Black*, 732 F.3d at 502 ("[t]he lodestar may not be adjusted due to a *Johnson* factor that was already taken into account during the initial calculation of the lodestar").

In this case, too, the novelty and difficulty/complexity (*Johnson* factor (2)) have already been factored into the overall "time and labor required" (*Johnson* factor (1)), and both of these into the first lodestar component (the hours it reasonably took to represent Alonzo-Miranda in this case). Likewise, "the skill required to perform the legal service properly," "the experience, reputation, and ability of the attorneys," and the supporting declarants' customary fee and fee awards in similar cases (*Johnson* factors (3), (5), (9) and (12)) have already been factored by the supporting declarants into the hourly rates that are reasonable for Alonzo-Miranda's counsel in the San Antonio market. Because these *Johnson* factors have already been factored into the lodestar, they may not be used again to adjust the lodestar.

Of the remaining *Johnson* factors—(4) the preclusion of other employment by the attorney due to acceptance of the case; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client—the only one that merits discussion is (8). The Fifth Circuit "has held that 'the most critical factor in determining an attorney's fee award is the degree of success obtained.'" *Black*, 732 F.3d at 503. And it is an important factor to discuss because the Fifth Circuit has held that "where the fee award was more than six times greater than the amount of relief awarded ..., we cannot simply assume that the district court considered the *Johnson* factors." *Gagnon v. United Technisource, Inc.*, 607 F.3d 1036, 1044 (5th Cir. 2010). The consideration must be explicit.

Alonzo-Miranda recovered $30,534.77 for denial of a reasonable accommodation, but did not prevail on the claim for unlawful termination that he added when the termination occurred mid-case. His degree of success cannot be criticized on the ground that he recovered less than he asked for—he did not ask the jury for a specific amount—and the Supreme Court has warned that

> [a] rule of proportionality [between fees sought and damages awarded] would make it difficult, if not impossible, for individuals with meritorious civil rights claims but relatively small potential damages to obtain redress from the courts. This is totally inconsistent with Congress' purpose in enacting § 1988. Congress recognized that private-sector fee arrangements were inadequate to ensure sufficiently vigorous enforcement of civil rights. In order to ensure that lawyers

> would be willing to represent persons with legitimate civil rights grievances, Congress determined that it would be necessary to compensate lawyers for all time reasonably expended on a case.

City of Riverside v. Rivera, 477 U.S. 561, 578, 106 S. Ct. 2686, 2696, 91 L. Ed. 2d 466 (1986) (footnote omitted).[9] *See also Lewallen v. City of Beaumont*, 394 F. App'x 38, 46 (5th Cir. 2010) ("[t]here is no strict rule or maximum limit on the permissible ratio of fees to damages").

Further, monetary recovery need not be the only measure of success. In Farrar v. Hobby, Justice O'Connor's concurring opinion illustrated this principle:

> The difference between the amount recovered and the damages sought is not the only consideration, however. *Carey v. Piphus,* 435 U.S. 247, 254, 98 S. Ct. 1042, 1047, 55 L. Ed. 2d 252 (1978), makes clear that an award of nominal damages can represent a victory in the sense of vindicating rights even though no actual damages are proved. *Ante,* at 573. Accordingly, the courts also must look to other factors. One is the significance of the legal issue on which the plaintiff claims to have prevailed....
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> [S]uccess might be considered material if it also accomplished some public goal other than occupying the time and energy of counsel, court, and client. Section 1988 is not "a relief Act for lawyers." *Riverside v. Rivera*, 477 U.S. 561, 588, 106 S. Ct. 2686, 2701, 91 L. Ed. 2d 466 (1986) (REHNQUIST, J., dissenting). Instead, it is a tool that ensures the vindication of important rights, even when large sums of money are not at stake, by making attorney's fees available under a private attorney general theory.

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[9] *Riverside* was a plurality opinion of four justices, but a fifth concurred in rejecting a rule of proportionality: "Petitioners argue for a rule of proportionality between the fee awarded and the damages recovered in a civil rights case. Neither the decisions of this Court nor the legislative history of § 1988 support such a 'rule.'" *Riverside*, 477 U.S. at 585, 106 S. Ct. at 2699-700 (Powell, J., concurring).

Farrar v. Hobby, 506 U.S. 103, 121, 113 S. Ct. 566, 578, 121 L. Ed. 2d 494 (1992). In *Brandau v. State of Kansas*, 168 F.3d 1179 (10th Cir.), *cert. denied*, 526 U.S. 1133, 119 S. Ct. 1808, 143 L. Ed. 2d 1012 (1999), the plaintiff prevailed before a jury on her claim of sexual harassment, but received only a $1.00 award of nominal damages; nonetheless, the district court awarded fees and costs of $41,598.13, and the Tenth Circuit affirmed:

> Plaintiff's victory put Kansas, or at least Wyandotte County, on notice that it should reform its sexual harassment policies and that it is proceeding at its peril if it declines to do so. These results—vindicating rights secured by Title VII and providing a broad constitutional benefit to other employees of Wyandotte County—are in the interests of the public and are exactly what Congress intended to encourage under Title VII.

168 F.3d at 1183.

The same consideration equalizes any disproportion that might otherwise exist between Alonzo-Miranda's recovery and the amount requested in this motion: as previously noted, this case is, so far, the only one of its kind, and therefore serves the important public purpose of notifying military veterans with PTSD, and their employers, that reasonably accommodating the disability may include allowing a service dog at work.

Nonetheless, Alonzo-Miranda's counsel have, in the exercise of billing judgment, reduced by 25 percent their time for pursuing the termination-based claim.[10] This is reduction is shown in Exhibit 3, and results in the following adjusted lodestar fee:

Lawyer	**Hours**	**Rate**	**Lodestar Fee**
John W. Griffin	257.50	$500/hour	$128,750.00
Robert E. McKnight	58.00	$400/hour	$23,200.00
Oscar H. Villarreal	8.50	$350/hour	$2,975.00
Michael J. Neuerburg	624.00	$275/hour	$171,600.00
Paralegals			
Richard Soliz	8.00	$125/hour	$1,000.00
Total			$327,525.00

C. Alonzo-Miranda's Costs

"Costs" in an action of this nature is a slightly misleading term because it includes not just the costs that are available to a prevailing party under 28 U.S.C. § 1920,[11] but all other costs that an attorney would normally charge to a fee-paying

[10] But if the Court chooses instead to eliminate some of the termination-related hours from the reasonable-hours component of the lodestar, then it should not use the lack of success on the termination claim to reduce the lodestar, in line with the above-quoted rule that *Johnson* factors used to calculate the lodestar may not be used again to adjust the lodestar.

[11] (1) [F]ees of the clerk and marshal; (2) fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case; (3) fees and disbursements for printing and witnesses; (4) fees for exemplification and copies of papers necessarily obtained for use in the case; (5) docket fees; and (6) compensation of court appointed experts, interpreters, and special

(continued...)

client. *See, e.g.*, *Mota v. Univ. of Texas Houston Health Science*, 261 F.3d 512, 529 (5th Cir. 2001) (in a prevailing party fee award under Title VII, 42 U.S.C. § 2000e-5(k), holding that a reasonable attorney's fee includes costs items *beyond those allowed under 28 U.S.C. § 1920*, including all reasonable costs charged a fee-paying client); *Associated Builders & Contractors, Inc. v. Orleans Parish School Board*, 919 F.2d 374, 380 (5th Cir. 1990) (in a prevailing party fee award under 42 U.S.C. § 1988, affirming the trial court's award of out-of-pocket expenses, including charges for copies, travel and telephone, noting that such items are "plainly recoverable" because they are part of the costs normally charged to fee-paying clients).

The total costs incurred are listed in Exhibit 8 (with selected invoices also attached; the movants are willing to provide other invoices upon request). Griffin attests that the requested costs are for items that his firm would normally charge to fee-paying clients and were reasonably necessary for the pursuit of this litigation. (Exh. 1 (Griffin Dec.) at ¶ 18.) The Court should award all of them.

D. Post-Judgment Interest on the Award of Fees and Costs

A prevailing party is entitled to post-judgment interest on an award of fees and costs from the date of the judgment on the merits that establishes the right to

[11](...continued)
interpretation services.

the award of fees and costs. *Louisiana Power & Light*, 50 F.3d at 332. Hence, the Court's order on this motion should provide for interest from the date when the final judgment was entered (April 6, 2015).

E. Post-Motion Proceedings

Alonzo-Miranda notes that the defendant has filed on this date a motion for post-trial review of the judgment. Responding to that motion, and replying in support of the instant motion, will necessitate the expense of more time and costs, which will be addressed in a supplemental motion for fees and costs.

Conclusion

Alonzo-Miranda's lawyers have fully complied with their obligations in seeking fees and costs in this case. They maintained meticulous, detailed contemporaneous records of their time and expenses. They have exercised billing judgment and deleted from this request time that was unnecessary, duplicative or unreasonable for any reason. And they have sought for themselves (and for others in their firms) billing rates that are consistent with the standard of reasonableness documented in the numerous supporting declarations. Therefore, the Court should award the fees, costs, and postjudgment interest as set forth below:

a. An adjusted lodestar fee of $ 327,525.00, based on the following::

Lawyer	Hours	Rate	Lodestar Fee
John W. Griffin	257.50	$500/hour	$128,750.00

Robert E. McKnight	58.00	$400/hour	$23,200.00
Oscar H. Villarreal	8.50	$350/hour	$2,975.00
Michael J. Neuerburg	624.00	$275/hour	$171,600.00
Paralegals			
Richard Soliz	8.00	$125/hour	$1,000.00
Total			$327,525.00

b. Costs in the total amount of $26,490.30.

c. Postjudgment interest on $ 354,015.30 from April 6, 2015.

Date: May 4, 2015

Respectfully submitted,

Juan Alonzo-Miranda,
By his attorneys,

/s/John W. Griffin, Jr.
John W. Griffin, Jr.
Texas Bar No. 08460300
203 North Liberty Street
Victoria, Texas 77901
(361) 573-5500 – Telephone
(361) 573-5040 – Telecopier
jwg@lawmgk.com

Oscar H. Villarreal
LUTTREL ZUCKER LAW GROUP
Texas Bar No. 20583900
400 N. Loop 1604 E.
Afton Oaks, Ste. 208
San Antonio, Texas 78232
(210) 426-3600 – Telephone
(210) 426-3610 – Fax

Counsel for the Plaintiff

Certificate of Conference

I certify, under LOCAL RULE CV-7(j), that I attempted to resolve the parties' differences on the plaintiff's entitlement to an award of fees and costs, but that discussion was not fruitful. The defendant's filing today, May 4, 2015, for post-trial review of the judgment indicates that it does not presently desire to resolve these differences.

/s/ John W. Griffin, Jr.
John W. Griffin, Jr.

Certificate of Service

I certify that a true and correct copy of this document has been served upon the defendant via the electronic filing system of the United States District Court for the Western District of Texas on May 4, 2015.

William L. Davis
davisw@jacksonlewis.com
JACKSON LEWIS P.C.
500 N. Akard, Suite 2500
Dallas, Texas 75201

/s/ John W. Griffin, Jr.
John W. Griffin, Jr.